12: Haar S-4 (1939) 1948 OB1 Indonesia DB1
Atjehnese OD4 Batak OD5
Bali OF7 Atjehnese OD4
Minangkabau OD10

I 426 place after the last harvest and before the next planting. Any planting belongs to the person who put it in the ground. Even if redemption is managed before the harvest is in, the original owner of the land must permit the planter to have his harvest. 432

The explicit agreement of the pledge transaction, however, may stipulate the number of seasons the lender may have undisturbed use of the land.

[685] e. *Upkeep of pledged land.*—Pledged land must be returned to its native possessor in as good a state as that in which it was received. Damage resulting from bad faith must be compensated for. But there is no compensation for improvements or any increment in the value of the land. If the pledgee has planted perennial plants without the permission of the owner, unless he removes them again, they pass in native possession to the pledgor when the land is redeemed. In some places, however, as among the Bataks, when the pledgor tacitly permits the planting of trees on pledged land, he forfeits his right ever to redeem the land he has pledged.

f. *Lump repayment.*—Money borrowed on land must be repaid in a lump sum. If instalments are paid, they are no more than an entrusting of the sums to the pledgee in advance of final redemption.

In various law-areas there is a form of transaction which is a modified form of pledging (ngajual tutung in West Java; dondon susut among the Mandailing). In essence it is the prepaid rental of land. But the natives call it pledging, with the agreement that the loan shall be gradually worked off by turning over a part of the produce of the land. Then when the money advanced has been paid off, the field reverts to its owner.

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g. *Local variations.*—The pledging of land is of common occurrence in all law-areas of Indonesia. In each area it has its peculiar shadings in harmony with the local color given by the special legal system of the area.

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● 432 596 To give some examples: in Atjeh the offer and acceptance formula (ijaab kabul) is borrowed from Islam. Among the Bataks the transaction must take place over hot rice and with designation of the boundaries of the land in question (as is true of all their important agreements). In Minangkabau pledging of family land is permitted only to meet a family need for money for fulfilment of adat requirements (marriage of a daughter, funerals, elevation of a member to chiefship, repair of the adat house, etc.). In some of these situations the family headman has the power to pledge the land; in others a unanimous declaration of a family conclave is

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called for. Among these people the pledgee has to give the landowner an annual present of rice in continuing acknowledgment of the owner's right of redemption (pitungguh gadai). The Toba-Bataks accomplish the same function by having the owner preside at the annual garden sacrifices. In Bali it may be stipulated that if the field goes sterile, the loan advanced on the land must be paid back. In Java the community right of disposal limits the power of the individual to pledge the land, and this is true in other places. In Bantam the possibility of increasing the loan up to the sale value of the land is known as "ndalami gadé." The practice is recognized everywhere else, but under different names. In some places there is a repeated imitation of the initial land transaction before the village chief, in order to keep public recognition of the pledge relation alive. In Mingangkabau this is called "pitungguh gadai."

2. THE SALE OF LAND

As has already been noted, the payment of the purchase price in the presence of the chief effects an immediate transfer of native possession.

a. *Rights of a bona fide purchaser.*—Sales by persons who do not have a true title to the land occur again and again. The common situation is where the seller is merely a co-owner, or perhaps, an agent without proper authority. The transfer may well be approved and aided by the village chief under the impression that the seller is the rightful proprietor. In that event, if the buyer was acting in good faith, his purchase is good, and the law entitles him to the land in preference to the defrauded owner. The Dutch courts in a recent decision, which seems to be sound and fortunate, extended the principle to apply to the rights of a pledgee for the term fixed in a pledge transaction. The true native possessor of the land fraudulently sold is then in the position of having to buy back the land himself, or else he must give it up. His subsequent recourse is to attempt recovery of the sum in question from the fraudulent seller.[2]

b. *Public sale.*—The public sale of land in execution of a judicial decision is in violation of the principles of native law. There are no provisions for it in the adat. This raises a crucial question as to what is just, if a cultivated field is sold at a public sale for account of a false owner. No precautions have been taken in the Dutch law to see to it that the public sale is recognized in the native village legal

[2] Landraad Tasikmalaja of Nov. 18, 1935, *aff'd* Raad Batavia of July 24, 1936, 148 Tijdschrift 378.